

## REMARKS/ARGUMENTS

Applicants respond herein to the Office Action dated December 30, 2009.

Claims 1-3 and 5-9 are pending in the application, with claim 4 having been canceled and claims 5-9 having been withdrawn.

Claim 2 was rejected under 35 USC 112, second paragraph, as being indefinite. The Examiner considered the term "maximum temperature for the sushi material" in claim 1, line 15 as being vague and indefinite as not specifying a maximum temperature which is interpreted the same by different people. It is presumed, from the specific citation to claim 1, that the Examiner intended to reject claim 1 and not claim 2. Accordingly, claim 1 has been amended to specify that the maximum temperature is an objective criterion at which the taste of the sushi is impaired

Claims 1-3 were rejected under 35 USC 103(a) as being unpatentable over newly cited Ishino (JP 2001275591) in view of newly cited Guarino (US 5,863,576), with the prior rejection having been withdrawn.

In asserting the rejection against the claims, the Examiner cited Ishino as teaching a microwaveable vacuum-packed frozen sushi product. The packaging material of Ishino was cited as being a flexible microwave-safe plastic bag in which a sushi product was vacuumed, frozen and hermetically sealed. The Examiner considered that the space in the Ishino plastic packing bag had the claimed parameter of a volume of 0.6 to 0.2 times that of the sushi product. In support of this consideration, the Examiner noted that the claims do not state that the space is empty or filled and the space can be any arbitrary space.

The Examiner conceded that the Ishino reference fails to disclose an open topped plastic box that is placed in the plastic packing bag. The Examiner accordingly cited the Guarino reference as teaching the use of a plastic rectangular box that is placed inside of a vacuum sealed plastic bag for a seafood product and sushi is known to include seafood products. The Examiner concluded that it would accordingly have been obvious to place Ishino's sushi product on a box and place the box into a bag as taught by Guarino.

In response thereto, it is submitted that independent claim 1 has been amended to specify that the space in the plastic bag is a substantially continuous internal **empty** space extending between the box and the plastic bag and that such **empty** space is specifically between 0.6 to 0.2 times the volume of the frozen sushi product. Claim 1 has also been amended to specify the

minimum vacuum (600mm Hg) which must be applied to the frozen sushi product.

It is submitted that the newly cited Guarino reference is specifically directed to the packaging of lobster **with the shell** and that the use of the pallet with the raised sides (i.e., box) is specifically for the purpose of preventing the shell from puncturing the plastic bag and compromising the safety of the product:

“...Packaging for lobster, within which the product may be microwaved, **including the use of pallet structure for positioning the lobster within the packaging to avoid penetration of the plastic wrapping film by shell structure.** The packaging is vacuum sealed, flash frozen and distributed to be subsequently microwaved without rupture of the packaging until after microwaving...” (Abstract).

Guarino reiterates such specific purpose and function of the pallet (box):

“...It is therefore an object of the subject invention to provide a vacuum packaging process and the packaging to **enable lobster in the shell to be safely packaged,** and subsequently microwaved in the same package...

**The pallet also may have raised sides which help to protect the package.** The sides help, as the vacuum sealing takes place so the lobster are insulated from direct contact from the sides of the packaging **to prevent puncturing.** The sides are a potential stressed area as the covering bag fits fairly tightly around the lobster...” (col. 1, line 58 - col 2, line 47)

In contrast, the presently claimed sushi product is, by its very nature, soft. The rice and the slices of fish are designed to be ready to eat upon thawing and do not effect any puncturing. Accordingly, absent the teachings of the present invention, packaging with plastic bag(s) alone, as disclosed by Ishino is economical and effective. There are no safety concerns, such as the puncturing of the bags by the Guarino product, with the sushi of Ishino. One skilled in the art would thus not utilize Guarino’s plastic box within a plastic bag to package the sushi of Ishino without purpose and certainly not with the detrimental introduction of additional processing steps and components.

The Examiner asserts that placing sushi product on a box which is inserted into a bag (as taught by Guarino) would be done by one skilled in the art “in order to provide an attractive safe food product that can be microwaved”. This is, however, an erroneous reading of the Guarino disclosure. As described by Guarino at col. 4, lines 45-60, it is only the outer package or container 10, with a window, which provides an attractive product (lines 51-53) and not the

pallet. No such description is made in the Guarino description thereafter if the outer box 10 is not used. A pallet, as described by Guarino or any other box, absent the present disclosure, thus has no function whether for safety or for ornamental purposes, with respect to the sushi product disclosed by Ishino. One skilled in the art would have no reason to use a box for a sushi product and then place it in a bag, as suggested by the Examiner.

In addition, with the amendment to claim 1, the space formed between the box and the bag, is claimed as being continuous between the box and the bag and the, "...continuous **empty** internal space in said plastic packing bag having a volume 0.6 to 0.2 times that of said sushi product at the time of thawing..." This is not disclosed in Ishino, which describes a fully collapsed vacuumed bag with little (less than 0.1 the volume of the sushi), if any, **empty** spacing. In addition, the claimed empty space parameter (0.6 to 0.2 the volume of the sushi) is not disclosed or even derivable from any spacing around pieces of lobster in Guarino. Any space in the Guarino structure is not even relevant to the rice-containing sushi of Ishino which are tightly packed together.

The presently claimed sushi product is:

"...prepared and configured that upon exposure to microwave energy for a predetermined time, steam emanates from the frozen boiled rice so as to fill the space and to uniformly heat the sushi material by said steam after the predetermined time, to raise the temperature thereof without exceeding a maximum temperature for the sushi material at which maximum temperature the taste of the sushi is impaired..."

This enables suitable heating of the sushi product **by steam**, after the predetermined time of exposure to microwave energy for the steam generation. Thus, with the sushi of the present claims, and with steam derived from the rice component, if the volume is too large, the packaging is not only bulky, there is an undesirably lesser steaming effect with dissipation of the steam. With a too small volume, such as the plastic bag of Ishino, it takes an undesirably long time to provide uniform steaming and heating of the sushi wherein only thawing is effected by the microwave and heating is effected by steam generation from the rice. The sushi product of the presently claimed invention is configured to be removed from the microwave after thawing and is thereafter heated by the steam generated from the rice which is contained in the claimed empty space around the sushi. There is no disclosure in Guarino whether specific or implied of

the requisite empty space volume of claim 2. Furthermore, in Guarino the heating process is that of continuous microwaving and steam generation (col. 5, lines 55-63) whereby the sushi would be cooked (i.e., at a temperature above that "...at which maximum temperature the taste of the sushi is impaired...")

The claimed extent of vacuum required in the claims, as amended, causes the inner surface of the plastic bag to tightly collapse against the shaped rice section and hold it in the retaining box. However, absent the teachings of the present application it would be expected that such collapsing would obviate the requisite empty space necessary for the steam heating as claimed, such as in Ishino's structure and there is no teaching or suggestion in either reference to have both vacuum and empty space.

Claims 1-3 were also provisionally rejected on the ground of nonstatutory obviousness type double patenting over claims 2, 4 and 6 of copending Application No. 11/817,285.


In addition, claims 1-3 were provisionally rejected on the ground of nonstatutory obviousness type double patenting over claims 2 and 4-5 of copending Application No. 10/570,016 in view of Guarino.

However, neither of the copending applications has issued and the rejections remain provisional and do not have to be addressed at the present time. Furthermore, the present application has an earlier filing date than that of the cited copending Application No. 11/817,285.

Accordingly, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

Respectfully submitted,

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